

COVID-19 INTERNATIONAL TRAVEL BAN TO BE LIFTED FOR VACCINATED VISITORS: WHAT EMPLOYERS NEED TO KNOW

Insights
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The White House announced plans yesterday to reopen international travel to the United States in early November, a move that will surely come as welcome news for many employers and businesses. Under the plan announced by COVID-19 Response Coordinator Jeff Zients, travelers will need to show proof of full vaccination prior to boarding their overseas flights, and a negative COVID-19 test will also be required within three days prior to departure. According to the announcement, enhanced contact tracing and masking will also be required, but there will be no quarantine requirement. This is an early glimpse of the administration's plans to open up international travel to the United States, and the details could change in upcoming weeks. Until specifics emerge, what should employers do in preparation for this significant development?

Background

Since the first Presidential Proclamation went into effect in 2020, visitors from what is now a long list of countries have been banned from entering the United States due to COVID-19 (currently, the U.K. and Ireland, [the 26 Schengen Area countries](#), Brazil, China, India, Iran, and South Africa). In order to enter the United States, noncitizen travelers who have been physically

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present in banned countries within the prior 14 days must seek an exemption in order to enter the United States. For example, parents and guardians of children who are U.S. citizens and spouses of U.S. citizens are exempt from the ban, as are green card holders.

Businesses Have Had a Difficult Time

One of the most common exemptions sought is the so-called “National Interest Exemption,” (NIE) which allows businesses to request that essential personnel be allowed to come to the United States to support the country’s critical infrastructure. Processing NIEs has been a nightmare for U.S. employers and immigration attorneys.

At first, United States Customs and Border Protection (CBP) offices at various ports of entry granted NIEs. Then, the State Department decided that U.S. embassies and consulates should be making NIE decisions. As with local CBP offices, those seeking NIEs to come to the U.S. on critical business found that every consulate had its own NIE request processes, and that some consular locations were much more responsive than others. For example, some embassies and consulates have issued decisions on NIEs within a day or two, while others take weeks or even months to process NIE requests. Those employers that have struggled with these challenges will surely look forward to the end of the travel ban.

Unanswered Questions at this Point

U.S. businesses seeking to welcome employees and business visitors will soon breathe a sigh of relief, as will the hospitality and tourism industry, when the ban is lifted. However, different challenges will no doubt arise. Here are the unanswered questions we anticipate as we look forward to the ban being lifted.

Will Policy Include Exemptions?

There is no doubt that lifting the geographic ban and replacing it with a full vaccination requirement is part of

the Biden administration's push to encourage vaccinations, but in many countries infrastructure and other challenges have been a stumbling block to vaccination rollouts. The percentage of people fully vaccinated varies widely among countries. For example, our neighbor to the north, Canada, has a 69% full vaccination rate, while Mexico's is currently at 32%. Many African countries are still in the low single digits. Unless things drastically change between now and when the new rules go into effect, the new policy will, in effect, serve as an almost complete travel ban for Africans.

The new rule will lead to some unexpected consequences. For example, Japan, a country that is not currently covered by the travel ban, has a full vaccination rate of 53% of its population. If the new policy were implemented now, almost half of the Japanese population would find itself unable to travel to the U.S. Similarly, South Korea's full vaccination rate is only 42%, but residents of that economically important country are currently not restricted from entering the United States. And those living in Spain and Portugal, both currently covered by the travel ban, and with 76% and 81% full vaccination rates respectively, would find themselves suddenly able to travel to the U.S. more or less freely. All of this raises an important question: will the new policy include exemptions for unvaccinated (or partially vaccinated) individuals seeking to travel to the U.S. from countries with low vaccination rates?

Which Vaccines Will Be Accepted?

Another key question that will have to be addressed includes which vaccines the United States government will recognize. The "big three" – Moderna, Pfizer, and Johnson & Johnson – will certainly make the cut. But what about Sinopharm and Sinovac, which have been approved by the World Health Organization (WHO) for emergency use and are being used in China and dozens of countries around the world?

What Proof of Vaccinations Will Be Used?

Another question presently unanswered revolves around what forms of vaccination proof the United States will accept. No doubt that immigration officials will put measures in place to detect and prevent the use of fraudulent vaccination records, but we yet to have detailed information about how the certification process will work.

What Should You Do?

Over the course of the next several months, we anticipate immigration officials will offer clarifications to shed light on these and other details. But in the meantime, there are steps you can take to prepare for the ban to be lifted.

At this point, businesses planning to invite international visitors to the U.S., whether on work visas or for business meetings, should immediately start to encourage noncitizens to start the vaccination process now in anticipation of the new rules going into effect in November.

Further, we will also monitor whether elimination of NIEs will have an effect on visa processing times at embassies and consulates, and whether the new rules will spark an increase in visa applications. Fisher Phillips has assisted clients with obtaining hundreds of NIEs during the pandemic, and we will continue to monitor this evolving situation.

We will monitor these developments and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Immigration Practice Group](#).